

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF**  
**SRI LANKA**

In the matter of an Application for Bail  
in terms of section 83 (2) of the Poisons,  
Opium and Dangerous Drugs  
(Amendment) Act No. 41 of 2022.

**CA Case No: BAL/353/2023**  
**MC 8 - Colombo**  
**Case No: B/82419/08/2022**

Officer-in-Charge,  
Police Narcotics Bureau,  
Colombo 01.

**Complainant**

**Vs.**

1. Saleem Thuwan Roshan,  
No. 35/3, Baron Thilakaratne Mawatha,  
Mulleriyawa.
2. Liyanaarchchige Ravindu Dilshan,  
No. 122/1/1, Ramahera Road,  
Hewagama, Kaduwela.

**Suspects**

**AND NOW**

Wijeratnemudiyanselage Siriya Dayani  
Wijeratne,  
No. 122, Hewagama, Kaduwela.

**Petitioner**

**Vs.**

1. Officer-in-Charge,  
Police Narcotics Bureau,  
Colombo 01.

**Complainant- Respondent**

2. The Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**2<sup>nd</sup> Respondent**

**AND**

Liyanaarchchige Ravindu Dilshan

**2<sup>nd</sup> Suspect**

**Before: R. Gurusinghe J.**

**&**

**M.C.B.S. Morais J.**

**Counsel:** Kanchana Rathwatte with Nuwan de Alwis for the  
Petitioner.

Malik Azeez, SC for the Respondents.

**Inquiry on:** 29.04.2024

**Decided On:** 06.06.2024

**M.C.B.S. Morais J.**

The petitioner is the mother of the 2<sup>nd</sup> suspect in the case bearing number B 82419/08/2022 in the Magistrate Court of Colombo. The 2<sup>nd</sup> suspect was arrested along with the 1<sup>st</sup> suspect by the Special Task Force of the Sri Lanka Police on or about 14<sup>th</sup> of December 2022 for having in possession and trafficking a gross quantity of 13 kilograms 410 grams of 'Diacetylmorphine 'alias 'Heroin'. Subsequent to the Report of the Government Analysts the pure quantity of said heroin is said to be 6468.9 grams. It is apparent that the suspect has been produced before the Magistrate Court of Colombo on the 15<sup>th</sup> of December 2022 and held in remand custody up to this date.

The petitioner has made this application before us under section 83 of the Poisons, Opium and Dangerous Drugs (Amendment) Act, No.41 of 2022. As for the provisions of section 83(2),

*“83(2) notwithstanding the provisions of sections 84 and 85, a person suspected or accused of an offence under subsection (1) of section 54A and section 54B-*

*(a) of which the pure quantity of the dangerous drug, trafficked, imported, exported, or possessed is ten grams or above in terms of the report issued by the Government Analyst under section 77A; and*

*(b) Which is punishable with death or life imprisonment, shall not be released on bail except by the Court of Appeal in exceptional circumstances.”*

In, ***Ramu Thamothearampillai V. The Attorney General*** [2004] 3 SLR 180, it was held that;

*“the decision must in each case depend on its own peculiar facts and circumstances”*

In, ***Labyndarage Nishanthi V. Attorney General*** CA (PHC) APN 48/2014), said that;

*“...the term ‘exceptional circumstances’ has not been explained or defined in any of the statutes. Judges are given a wide discretion in deciding in what creates a circumstance which exceptional in nature.”*

In, ***Welathanthrage Amila Sampath Botheju V. Attorney General*** CA/BAL/0239/23, it was held that;

*“...a certain situation amounts to exceptional circumstances or not, has to be considered on a case-by-case basis, unique to each application before the court.”*

When applied in relation to the facts before us, in paragraphs 26 to 32 of the petition, the petitioner pleads certain grounds which are alleged as exceptional grounds and they are as follows:

26. The petitioner states that a grave miscarriage of justice has been meted out on the suspect by the Police STF who have reported fabricated facts to the learned Magistrate wherein an innocent person is held in incarceration.
27. The petitioner states that ex facie the fact that irrefutable video evidence and detailed call records have been made available by the 2<sup>nd</sup> suspect, which have been submitted to the learned Magistrate wherein it is clear that the entire sequence of events has been fabricated by the Police Department STF.
28. The petitioner states that in a matter of this nature where the equitable rights of an innocent person cannot be guaranteed at the hands of a state agency who have fabricated the case ought to be considered as an exceptional circumstance.
29. The petitioner states that the suspect is the sole breadwinner of the family and a long period of incarceration without any meaningful income coupled with the severe economic hardship faced by the country would result in his family finding it extremely difficult to sustain themselves.
30. The petitioner states that the 2<sup>nd</sup> suspect was to marry his fiancée in the near future and a long period of incarceration would prevent him from living a fruitful life as a normal human being.
31. The petitioner states that given the pandemic which is still prevalent in the country, there are issues as to when the indictment will be served on him and when this matter will be taken up in Court and as well as when the Trial will conclude, therefore leading him to being incarcerated for a prolonged period of time.
32. The petitioner states that the suspect has no pending litigation nor has he any previous convictions.

Other than the above urged, the petitioner has not relied on any other exceptional ground. When considering the above, many would fall into the category of the *weaknesses of the prosecution* case and mere alleged weaknesses of the prosecution case are insufficient to constitute exceptional circumstances.

The paragraph '30' would not amount to exceptional circumstances but fall into the category of personal circumstances. The prevailing situation of the country and the time taken to conclude the trial are common to every person held in custody and not exceptional to the petitioner.

Though the suspect has no previous convictions or pending cases, it would not constitute to be an exceptional circumstance to enlarge the petitioner on bail in this instance case.

Hence, I do not see any exceptional ground to grant bail, this application is refused and dismissed.

**Judge of the Court of Appeal**

**R. Gurusinghe J.**

**I agree**

**Judge of the Court of Appeal**